

SUMMARIES OF ATTORNEY GENERAL OPINIONS

The Administrative Procedure Act requires the publication of summaries of each Attorney General opinion. (A.R.S. § 41-1013(B)(4)). The following summaries were filed in the Office of the Secretary of State. For a complete list of the Attorney General's opinions, please refer to the latest edition of the Semi-Annual Index to the *Arizona Administrative Register*.

Attorney General Opinion I99-011 - In interpreting the Arizona constitutional requirement that instruction be furnished "as nearly free as possible," the Arizona Supreme Court has held that a state university does not violate the constitutional retirement when it imposes fees that neither excessive nor unreasonable. Whether tuition is unreasonable or excessive cannot be determined as a matter of law, but is an issue of fact to be evaluated in light of all relevant circumstances. The Arizona Board of Regents ("ABOR") has statutory responsibility to fix resident tuition and fees taking into account the universities' programs, the legislatively approved budget, and other sources of revenue. One of the circumstances that the ABOR may consider when determining whether tuition is unreasonable are the tuition and fees at other public universities, although this factor may not be the sole basis for raising tuition.

Attorney General Opinion I99-012 - The Appraisal Board's ("Board") enabling legislation prohibits "more than two persons from the same professional appraisal organization or association" from serving on the Board concurrently. A.R.S. § 32-3604(D). Although the Appraisal Institute has multiple chapters throughout Arizona, members of the Appraisal Institute belong to the "same professional appraisal organization or association." Accordingly, the appointment to the Board of a third member of the Appraisal Institute is inconsistent with A.R.S. § 32-3604(D). Notwithstanding the inconsistency, Arizona courts have held that the acts of *de facto* officers are valid. This common law principle should shield the decisions of the Board if challenged for non-compliance with A.R.S. § 32-3604(D). The Board, however, may also wish to ratify its decisions in an abundance of caution.

Attorney General Opinion I99-013 - The Clean Elections Act authorizes the Clean Elections Commission ("Commission") on Appellate Court Appointments ("Appellate Commission") to create, and a state official to select from, a new sixth slate of candidates for the Commission when the slate initially presented to the state official contains only ineligible candidates. Under the circumstances, the sixth slate created by the Appellate Commission is legally constituted and a state official may not obtain yet another slate from which to choose.

Attorney General Opinion I99-014 - The Department of Education is subject to the direction and control of the Director of the Department of Administration ("Director") for personnel administration. The Director, however, may delegate that authority to the Superintendent of Public Instruction ("Superintendent").

Attorney General Opinion I99-015 - The Legislature has required the Arizona Board of Regents ("ABOR") to adopt procurement procedures that are "substantially equivalent" to the policies and procedures prescribed in Arizona's procurement code. Because a design-build project would be a significant departure from the policies and procedures prescribed in the procurement code, the ABOR is without legal authority to authorize it.

Attorney General Opinion I99-016 - A person on probation for a misdemeanor conviction may not possess a firearm during the term of probation, regardless of whether the probation is supervised. A.R.S. §§ 13-3102(A)(4) and 13-3101(6)(d). This statutory prohibition does not exempt possession of firearms for target practice.

Attorney General Opinion I99-017

1. State monies for charter schools sponsored by school districts may be commingled with school district monies, but monies for charter schools sponsored by the State Board of Education ("Education Board") or the State Board for Charter Schools ("Charter Board") must be kept separate from school district monies.
2. Warrants cannot be issued to pay for the expenses of charter schools operated by a private person or private organization.

Attorney General Opinion I99-018

1. Pursuant to A.R.S. § 15-352(A), school councils formed before September 16, 1994, the effective date of the legislation requiring school councils, do not need to be reconstituted if those school councils include representation by more than one teacher and more than one parent or guardian of a pupil enrolled at the school. However, school councils formed on or after September 16, 1994, and school councils formed before that date that have not complied with the membership requirements in A.R.S. § 15-352(A) must comply with A.R.S. § 15-351.
2. Because school councils make recommendations that school district governing boards may accept or reject, governing boards are not required to reevaluate decisions based on school council recommendation, despite the fact that the school council membership is inconsistent with A.R.S. § 15-351. The governing board, should, however, take into account the composition of the school council when it considers and weights the recommendations made.

Attorney General Opinion I99-019 - The design of a golf course involves the practice of landscape architecture as defined by A.R.S. § 32-101(B)(18). Therefore, designing a golf course in Arizona requires the use of a registered professional.

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Attorney General Opinion I99-020 - The Legislature has prohibited a public agency officer or employee from selling equipment, materials, supplies, or providing services to that public agency except pursuant to a contract awarded after public competitive bidding. This prohibition does not apply to the spouses of public agency officers or employees. However, the public agency or employee cannot be involved in any manner with decisions associated with a spouse's contract and must disclose the spouse's interest in the contract as required by Arizona's conflict of interest statutes.

Attorney General Opinion I99-022 - School district governing boards must follow the procedures established by A.R.S. § 15-843 for all readmission decisions regarding previously-expelled students and comply with federal and state laws concerning the confidentiality of student records.

Attorney General Opinion I99-024 - A school district may contract with an architect either for a period of time of up to five years or for a specific project. However, a school district must ensure that awarding architectural contracts for a specific period of time will not diminish competitive bidding.

Attorney General Opinion I99-025 - Based on the specific language of the open primary provision of the Arizona constitution and the statutes that implement it, as well as standard rules of statutory construction, the open primary provision does not extend to presidential preference elections.

Attorney General Opinion I99-026 - The Legislature has not authorized Arizona Department of Transportation ("ADOT") to borrow money from an Indian tribe to advance a highway improvement project.

Attorney General Opinion I99-027 - Proceeds of Grant Anticipation Notes ("GANs") and the revenues from the grant agreements the Board pledges for repayment of the GANs constitute trust monies, as that term is used in A.R.S. § 35-310(5), and must be invested according to the directive of A.R.S. § 35-313(A). Interest accruing from those investments is not credited to the state general fund, but instead may be used as provided by A.R.S. § 28-7615.

Attorney General Opinion I99-028 - A state university may require purchasers of certain athletic tickets to also contribute to a booster foundation created to support the university's athletic programs, and this practice would not violate the gift prohibition in Article IX, § 7 of the Arizona Constitution provided that the benefit the public receives is adequate.

Attorney General Opinion I99-029 - The Citizens Clean Elections Commission has the duty and authority to enforce the provisions of A.R.S. § 16-944 requiring lobbyists to pay an annual fee.

Attorney General Opinion I99-030

1. The Work Force Recruitment and Job Training Fund ("Fund") is to be used only for costs relating to job training, which does not include recruitment.
2. To ensure compliance with Article IX, § 10, of the Arizona Constitution, corporations operating private or parochial schools should not receive grants from the Fund for training teachers or school administrators.

Attorney General Opinion I00-001

1. Before the primary election, a non-participating legislative candidate must file a report when that candidate's expenditures exceed \$7,000, and a non-participating Corporation Commission candidate must file a report when expenditures exceed \$28,000. After the primary election, reports are triggered when contributions less expenditures through the primary election exceed \$10,500 for non-participating legislative candidates and \$42,000 for Corporation Commission candidates. For elections after 2000, the amounts that establish reporting obligations will be adjusted for inflation under A.R.S. § 16-959.
2. Contributions received as of September 28, 1999, will not trigger a reporting requirement because through the primary election, reports are triggered by expenditures, not contributions. After the primary election, reports are triggered by contributions less expenditures through primary election day.

Attorney General Opinion I00-002 - Bicyclists traveling slower than the normal speed of traffic on a roadway must comply with A.R.S. § 28-704(A) only if the lane in which the cyclist is riding is too narrow for a bicycle and vehicle to travel safely side by side as described in A.R.S. § 28-815(A)(4).

Attorney General Opinion I00-003 - Under A.R.S. § 23-901 time spent by volunteer state employees in training missions for search or rescue operations is eligible for inclusion in calculating workers' compensation benefits, and Ariz. Att'y Gen. Op. I85-027 is no longer correct to the extent it concludes otherwise.

Attorney General Opinion I00-004 - Because the Department can adequately protect Arizona's interests by inspecting citrus for compliance with Arizona's standards when the citrus is packed in this state, the Department cannot require that citrus meet Arizona's standards before it is imported for packing. This Opinion does not in any way limit the Department's authority to prohibit the entry of citrus because of health or safety concerns.

Attorney General Opinion I00-005

1. A school district governing board cannot make contractual promises to a private party in exchange for a donation of money or land that are contrary to statutory or constitutional requirements or are inconsistent with the district's public trust obligations.
2. A charter school governing board cannot make contractual promises to a private party in exchange for a donation of money

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or land that are contrary to statutory or constitutional requirements or are inconsistent with the charter school's public trust obligations.

3. Because the charter school governing board is responsible for policy and operational decisions, it must authorize agreements concerning the operations of the charter school. Before a charter school is established, a charter school applicant may make agreements concerning a proposed charter school, but those agreements must be consistent with the laws governing charter schools and with the charter school's public trust obligations.

Attorney General Opinion I00-006

1. Section 15-2041(F), A.R.S., does not require that a school district governing board accept a donation of land instead of a donation of money.

2. In deciding whether to accept a donation of land or money, a school district governing board must act in the best interests of the public, focusing on its responsibility to promote education. This determination cannot be made in the abstract, but rather requires the governing board to analyze the specific facts of the transaction.

Attorney General Opinion I00-007 - An expenditure of an elected official's personal monies for a newsletter to constituents is within the campaign finance regulatory scheme and must be disclosed. All expenditures of an elected official's personal monies for a newsletter to constituents must be reported as an expenditure of that person's campaign committee.

Attorney General Opinion I00-008 - An analysis of all the statutes governing fund-raising activities demonstrates that members of the Legislature may participate in fund-raising activities for political organizations during a regular session, as long as the fund-raising complies with all limitations and requirements of Arizona's campaign finance laws, A.R.S. §§ 16-901 through 16-961. The prohibitions in A.R.S. § 41-1234.01 against lobbyists making campaign contributions to and lobbyists soliciting campaign contributions for legislators during the regular session do not limit fund-raising for political organizations, provided that the contributions are not earmarked for legislators in violation of A.R.S. § 16-907(B).

Attorney General Opinion I00-009 - Because Arizona's Open Meeting Law applies to a charter school governing board, the Open Meeting Law applies to a meeting of a charter school operator's corporate board of directors if (1) a quorum of the charter school governing board is present, and (2) there is discussion about matters that could foreseeably come to a vote before the charter school governing board.

Attorney General Opinion I00-010 - School districts may provide benefits under an early retirement program and participants need not continue working in order to receive such benefits, as long as the district has received adequate consideration for the promised benefits.

Attorney General Opinion I00-011 - (1) The State Plumbing Code ("Code") is enforced at the local level as an ordinance, and the Arizona Department of Environmental Quality ("ADEQ") is not responsible for enforcing the Code; (2) the Code does not supersede any laws ADEQ administers, and the Code must be read in conjunction with other legal requirements; (3) the Arizona Uniform Plumbing Code Commission ("Commission") has jurisdiction over any subject within the 1994 Uniform Plumbing Code and may modify that plumbing code as it deems appropriate; (4) municipalities and counties should adopt the Code as an ordinance within six months after adoption by the Commission; and (5) municipalities and counties may grant variances to the Code on an individual project basis, and any variances must be consistent with other applicable laws.

Attorney General Opinion I00-012 - Neither federal nor state law requires Arizona school districts to provide special education services to home-school students.

Attorney General Opinion I00-013

1. A school board member may participate in filling a secretarial position for which his or her first cousin has applied.

2. For reasons unique to school district governing board members, a school district governing board member may participate in budgetary decisions regarding that board member's child who is employed by the district, unless the child is a dependent as defined in A.R.S. § 43-1001. If the child of the governing board member is the board member's "dependent," then the board member must not participate in any decision in which the child has a substantial interest.

Attorney General Opinion I00-014 - The one-year limitation in A.R.S. § 38-211(E) applies to a public officer who is renominated by the Governor to serve an additional term. Thus, an officer who is renominated must leave office if the Senate does not confirm that nomination within one year from the date of renomination.

Attorney General Opinion I00-015 - The entire amount a municipality assesses for a parking violation is subject to the state surcharges, regardless of the label a local jurisdiction places on the payment; therefore, a municipality must collect the state surcharge on local administrative and case processing fees imposed for parking violations.

Attorney General Opinion I00-016 - State penalty assessments under A.R.S. §§ 12-16.01 and 12-116.02 do not apply to monetary assessments imposed on juveniles for delinquent or incorrigible acts pursuant to A.R.S. §§ 8-341(G)(2)(I) or (J), or § 8-321(F)(7). State penalty assessments, however, do apply to monetary assessments imposed against juveniles for: (1) driving under the influence; (2) civil or misdemeanor violations of motor vehicle statutes; (3) civil or misdemeanor violations of game and fish statutes; and (4) violations of local ordinances concerning parking, stopping, or standing.

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Attorney General Opinion I00-017 - The reference in A.R.S. § 42-5030.01(B) to paragraph 11 of A.R.S. § 15-2002(A) should be read to refer to paragraph 10 of that subsection. In addition, the Students FIRST legislation does not require an additional legislative appropriation in order for the State Treasurer to credit the three Students FIRST funds that are administered by the School Facilities Board.

Attorney General Opinion I00-018 - Members of the Governing Committee for Tax Deferred Annuities and Deferred Compensation Plans are state officers or employees, and, therefore, they should be covered by the state's self-insurance program for acts performed in the course and scope of their duties on behalf of the Governing Committee.

Attorney General Opinion I00-019 - The Supreme Court's ruling in *California Democratic Party v. Jones* does not invalidate Arizona's open primary law.

Attorney General Opinion I00-020 - The Legislature has prohibited cities and counties from using resources "for the purpose of influencing the outcome of elections." (Arizona Revised Statutes §§ 9-500.14, 11-410) These statutes prohibit general fund expenditures that support or oppose measures that have not yet qualified for the ballot as well as measures that have qualified for the ballot. Whether the prohibitions in A.R.S. §§ 9-500.14 and 11-410 extend to educational materials that do not expressly advocate for or against a measure requires analysis of the specific materials and the circumstances relating to their distribution to determine whether the materials are "for the purpose of influencing the outcome of elections."

Attorney General Opinion I00-021 - School district governing boards do not have express or implied statutory authority to contract with a private company to select, train, supervise, evaluate, and discipline the district's teachers and administrators.

Attorney General Opinion I00-022 - School boards lack the statutory authority to expend funds to pay membership dues in private civic organizations for employees and board members.

Attorney General Opinion I00-023

1. The state funding for students in a program labeled "early" first grade depends on the nature of the program. If such program is designed, based on the state standards and district curriculum, for students to complete first grade and advance to second grade, the students in the program are first graders for the purposes of state funding, and they are counted as full-time students. However, if the program is, based on the state standards and district curriculum, designed for children to move from "early" first grade into first grade the following year, the children are considered kindergartners for the purposes of state funding, and they are counted as half-time students.

2. The state funding for students in a program labeled "early" kindergarten also depends on the nature of the program. If such a program is designed, based on the state standards and district curriculum, for children to complete the kindergarten curriculum and advance to first grade, then the students in the program are considered kindergartners for the purposes of state funding, and counted as half-time students. However, if a program labeled "early" kindergarten is designed to prepare children for kindergarten, then the program is not a kindergarten, and the students are not counted for the purposes of calculating state aid under the school finance formula.

Attorney General Opinion I00-024 - The statutes governing the Contractors' Recovery Fund limit to \$20,000 the amount any injured person can recover for an "act, representation, transaction, or conduct." (A.R.S. § 32-1132(A)). After reaching the \$20,000 limit, an injured person cannot recover any more money from the Fund for future construction work done at the residence that was the subject of the \$20,000 claim. However, that person is not precluded from recovering from the Fund in the future for damages resulting from construction work done on a different residence. In addition, subsequent owners of a residence subject to the \$20,000 limit are not precluded from recovering from the Fund for damages resulting from different construction work on that residence.

Attorney General Opinion I00-025 - The Soldiers' and Sailors' Civil Relief Act does not exempt members of the Arizona National Guard who are residents of Arizona from Arizona income tax on their compensation and allowances.

Attorney General Opinion I00-026 - A.R.S. § 15-754(B) does not require a "limited English proficient" student to participate in an individual education program if that student's parent or guardian does not want the student to do so.

Attorney General Opinion I00-027 - Under A.R.S. § 15-756(7) the Superintendent of Public Instruction is not required to submit tests and criteria for determining English language proficiency to the State Board of Education for approval.

Attorney General Opinion I00-028 - The Arizona Constitution and Enabling Act do not require all monies generated from the rental, sale, or use of state trust lands to be deposited in a permanent fund. The statutes permitting rental proceeds and the interest earned on the sale of state trust lands to be spent for the benefit of the trust beneficiaries comply with the Constitution and Enabling Act.

Attorney General Opinion I00-029

1. Only measures listed in A.R.S. § 15-910.02(A) qualify for the energy reduction adjustment to statutory budget limits;
2. Under A.R.S. § 15-910.02, school districts may take the energy reduction adjustment in any future fiscal year in which the district qualifies;
3. If a school district realizes a savings in its Maintenance and Operation ("M&O") budget and those savings are outside the

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excess utilities portion of the budget, then the school district may budget those funds into the capital outlay section of future budgets so that those funds can be used for capital purchases;

4. If a school district realizes savings in its unrestricted capital budget, then the district may budget those savings for other capital and soft capital items; and

5. A school district that realizes a savings in its M&O budget because of energy and operational improvements may apply those funds to another M&O expenditure, provided that the school district has not otherwise exceeded any other subsection of its M&O budget.

Attorney General Opinion I00-030

1. Convicted sex offenders who were required to register under the law in effect at the time of conviction are not required to register if they do not meet the current statutory criteria in A.R.S. § 13-3821. Therefore, for example, a person with a single conviction for indecent exposure or public sexual indecency before 1995 is no longer statutorily required to register as a sex offender.

2. DPS must comply with any court order, including an order that appears to be contrary to law, such as an order waiving statutorily required sex offender registration or notification requirements, until that order is modified or vacated.

3. In performing its recordkeeping responsibilities, DPS must recognize a court order entered pursuant to A.R.S. § 13-907 that improperly sets aside a sex offense conviction until such an order is modified or vacated. However, an order under A.R.S. § 13-3821, whether proper or improper, does not relieve an offender of the statutory obligation to register under A.R.S. § 13-3821.

Attorney General Opinion I00-031 - Section 41-1232.08, Arizona Revised Statutes (effective January 1, 2001), prohibits a lobbyist from making an "expenditure for entertainment for a state officer of state employee" and prohibits state officers and employees from accepting such expenditures. This law prohibits a lobbyist from purchasing entertainment, defined as the expenditure paid to attend or participate in a sporting or cultural event or activity, for the benefit of a particular state officer of employee, even if the state officer subsequently reimburses the lobbyist for the expenditure. If, however, a lobbyist paid for entertainment that, at the time of the payment, was not for a particular state officer of employee, a state officer or employee may purchase the entertainment from the lobbyist, at full cost, before receiving the ticket.

Attorney General Opinion I01-001

1. Proposition 103 did not create vacancies on the Commission. Instead, at the general election in 2002, the voters of Arizona will elect the two additional Commissioners to increase the number of Commissioners from three to five.

2. Commissioners who were elected before approval of Proposition 103 are now eligible to serve two consecutive terms. A Commissioner who served a single term and then left office is eligible to run in any future election. A Commissioner concurrently serving may seek reelection for one more term without leaving office.

Attorney General Opinion I01-002 - The School Facilities Board is neither required nor permitted to substantively amend or revise its instructions to the State Treasurer after January 1 or each year based on new data later submitted by school districts.

Attorney General Opinion I01-003 - Because of the many tasks necessary to complete the statewide transition from current methods of English language instruction to the methods and procedures required by Proposition 203, the proposal to have programs that comply with Proposition 203 in place in schools by the beginning of the 2001-2002 school year satisfies Proposition 203 and federal law.

Attorney General Opinion I01-004 - Benefits paid under an early retirement program ("ERP") are not "compensation" for employees who joined the Arizona State Retirement System ("ASRS") plan after December 31, 1983 (or who were hired earlier and elected to have retirement benefits calculated under the law as amended in 1983), regardless of when the ERP benefits are paid. For employees who became members of ASRS on or before December 31, 1983 and did not elect to have retirement benefits calculated under the law as amended in 1983, ERP benefits paid at or before termination of employment are "compensation" for purposes of the ASRS plan, but ERP benefits paid thereafter are not.

Attorney General Opinion I01-005 - The Clean Elections Commission has the authority to deny funding to candidates who fail to meet the requirements of A.R.S. § 16-950, with the exception of A.R.S. § 16-950(C). The Secretary of State has the authority to enforce the requirements of A.R.S. § 16-950(C).

Attorney General Opinion I01-006 - If a school is run by the tribe or the federal government, then the school is not subject to Proposition 203. State public schools, in contrast, are generally subject to Proposition 203, but the state law must be applied in a manner consistent with federal law, including principles of tribal sovereignty and the federally-recognized right of Native Americans to express themselves through the use of Native American languages. Proposition 203 cannot prohibit a state public school located on the reservation or elsewhere from teaching students Native American language and culture.

Attorney General Opinion I01-007

1. School districts may use their teacher performance monies from Classroom Site Fund ("CSF") to increase teacher pay based on individual teacher performance as well as other factors such as school or district performance.

2. Although school district governing boards must ascertain the priorities of school principals and allocate CSF maintenance

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and operation funds according to those priorities “wherever possible,” governing boards need not allocate such funds *solely* in accordance with those priorities if they determine that an alternative allocation would “maximize classroom opportunities.”

Attorney General Opinion I01-008

1. All future expenditures of tobacco settlement monies must comply with Proposition 204. Consistent with Proposition 204, prior legislative appropriations for future fiscal years may be funded only if the programs specified in Proposition 204 have been fully funded.
2. Proposition 204 requires that all tobacco settlement monies the state receives be deposited into the Tobacco Litigation Settlement Fund (“Fund”). All settlement proceeds not expended before the enactment of Proposition 204 must be deposited into the Fund.
3. If monies remain in the Fund for a fiscal year after the AHCCCS expansion mandated by Proposition 204 has been fully funded, the AHCCCS director must use the remaining monies for the programs specified in A.R.S. § 36-2901.02(B)(2).
4. The funding levels for the programs established by the 1996 initiative must be adjusted for inflation every year since 1996, as required by A.R.S. § 5-522(E).
5. Under Proposition 204, the programs that receive Fund monies are eligible for full funding in the current fiscal year, which began July 1, 2000 and ends June 30, 2001.
6. Agencies must use Fund monies as mandated by Proposition 204. Under Proposition 204, Fund monies shall not supplant other AHCCCS appropriations.

Attorney General Opinion I01-009

1. Because a governing board member does not have a pecuniary or proprietary interest in retaining an elected governing board position, board members who would no longer reside in the district after unification do not have a conflict of interest and may therefore vote on the unification issue.
2. A school board member whose spouse works for a school district that may unify with the school board member’s district does not have a conflict of interest that precludes the board member from voting on the unification issue.